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3 In the Matter of)

MUR 6334

CELA

4)
5 Aristotle International, Inc.)
6)

7 **SECOND GENERAL COUNSEL'S REPORT**

8 **I. ACTIONS RECOMMENDED**

- 9 1. Enter into pre-probable cause conciliation with Aristotle International, Inc.;
- 10 2. Approve the attached proposed conciliation agreement; and
- 11 3. Approve the appropriate letters.

12 **II. INTRODUCTION**

13 The Commission previously found reason to believe that Aristotle International, Inc.

14 ("Aristotle" or "Respondent") violated 2 U.S.C. § 438(a)(4), the Act's "sale and use" provision,
15 by incorporating FEC data into its Aristotle 360 Relationship Viewer software program
16 ("Relationship Viewer") for the purpose of soliciting contributions or for commercial purposes.

17 *See* Factual and Legal Analysis, MUR 6334 (Aristotle Int'l, Inc.) ("F&LA"); Certification, MUR
18 6334 (May 26, 2011).¹ Aristotle is a software development firm that sells a comprehensive
19 campaign-finance program ("Aristotle 360") that "allow[s] political committees to . . . file
20 federal and state compliant financial disclosure reports and to manage their data." F&LA at 1
21 (quoting Decl. of Dean Phillips ¶ 14 (Sept. 13, 2010)). The Relationship Viewer is a component
22 program of Aristotle 360 that "uncover[s] relationships between someone in [a political
23 committee's] own database, through the voter file, state campaign reports and the Commission's
24 files." *Id.* (quoting Resp. at 14). The Relationship Viewer acts as a search tool: a political

¹ At that time, the Commission also authorized the use of its compulsory process to investigate further the extent of Aristotle's violation.

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1 committee enters the name of an individual in its own database, and other individuals with whom
2 that person has a familial, professional, or geographic-based relationship appear as search results
3 both as a web-like graphic and as a list in the left hand column. *Id.* at 2-3. A Relationship
4 Viewer-run search also displays each individual's contributions to both federal and state
5 candidates and political committees. *Id.* at 1-3. These federal contribution histories are derived
6 from information contained within reports filed with the Commission. *Id.*

7 Based on the Complaint's and Response's descriptions of the program — as well as
8 accompanying screenshots of the Relationship Viewer and marketing materials — the
9 Commission previously concluded that there was reason to believe that Aristotle violated
10 2 U.S.C. § 438(a)(4). Specifically, the Commission concluded that the Relationship Viewer
11 "appear[ed] to focus primarily on solicitation rather than compliance purposes, as evidenced by
12 Aristotle's marketing materials." *Id.* at 10. Moreover, the Commission concluded that "although
13 Aristotle explained that the contribution histories cannot be 'exported' to a spreadsheet or other
14 format, nothing prevents end-users from using the contributor list displayed on the results page
15 to solicit those individuals."² *Id.* at 11.

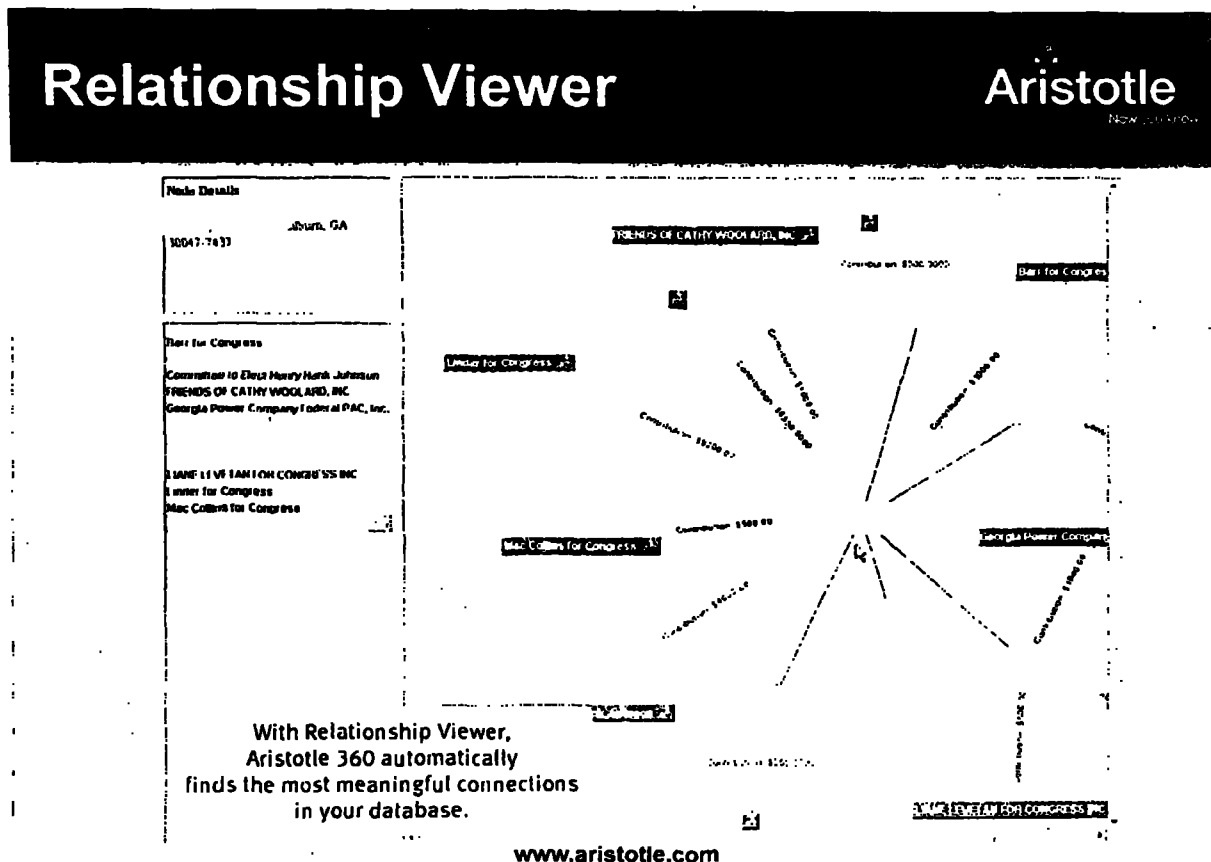
² In reaching its conclusions, the Commission noted that the Relationship Viewer's use of FEC data was more "far-reaching" than in Aristotle's previous software program Campaign Manager 5. F&LA at 9. Campaign Manager 5 was the subject of MUR 5625 (Aristotle Int'l, Inc.) in which the Commission was not able to approve recommendations to find probable cause that Aristotle violated 2 U.S.C. § 438(a)(4). *See* Certification, MUR 5625, (Mar. 18, 2010) (Commissioners Bauerly, Walther, and Weintraub voting in favor of recommendations; Commissioners Hunter, McGahn, and Petersen voting against recommendations); *see also* F&LA at 9-10. The "Compliance/Vetting" application in Campaign Manager 5 provided the contribution history for a single individual. *See generally*, Third Gen. Counsel's Rpt., MUR 5625 (Aristotle Int'l, Inc.).

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As explained below, it appears that the Relationship Viewer functions in a manner consistent with the Commission's description in the F&LA, providing further factual support for the Commission's original reason-to-believe finding that Aristotle violated 2 U.S.C. § 438(a)(4). Accordingly, based on all of the available information, we recommend that the Commission approve pre-probable cause conciliation

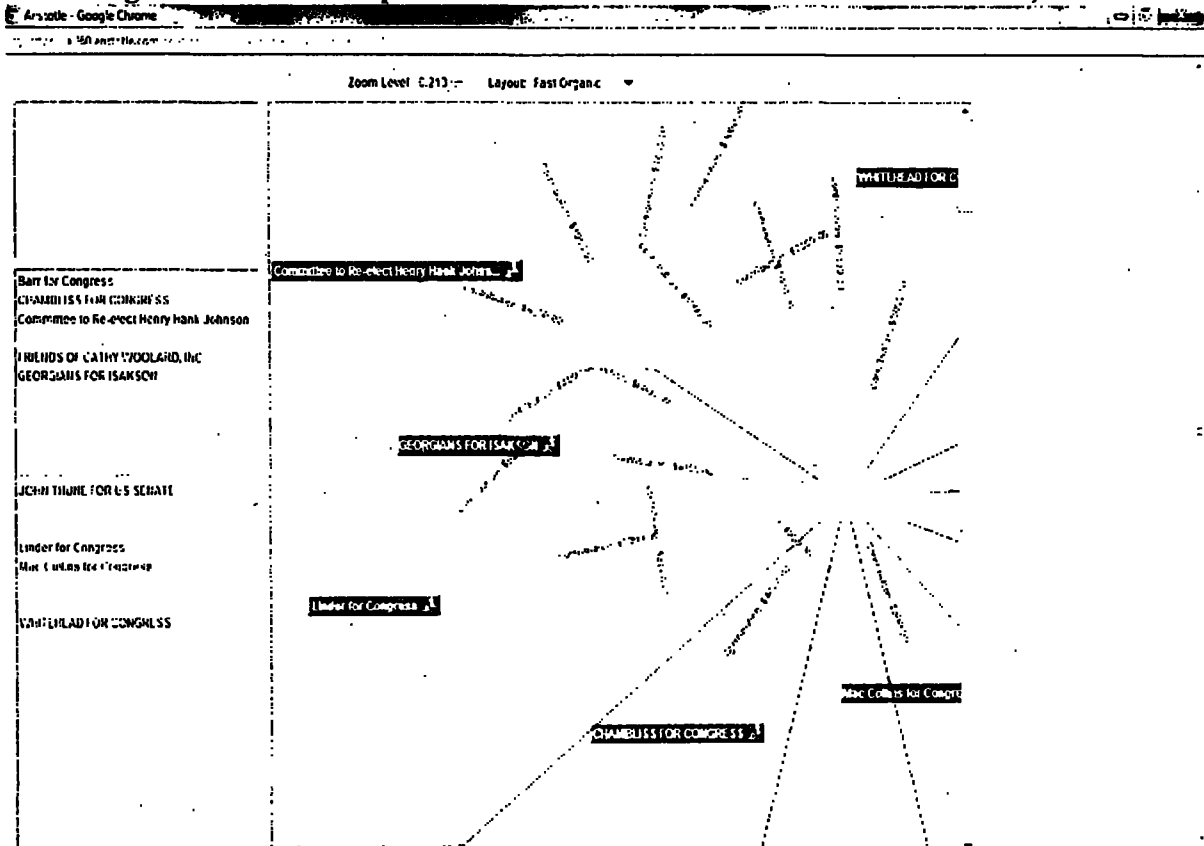
Figure 1. Relationship Viewer Power Point Slide From Complaint



The Commission's prior observations regarding the Relationship Viewer's actual functionality — based on these screenshots and the description of the program in Aristotle's response — were accurate. Through software demonstrations and written responses to OGC inquiries, Aristotle has confirmed that the depictions of the Relationship Viewer in its web-based demonstration, which formed the basis for Figure 1, "generally reflect" the software that is sold to the public. See Decl. of Dean A. Phillips ¶ 6 (June 18, 2012). The screenshot from Phillip's demonstration of the Relationship Viewer as shown in Figure 2 is illustrative: the Relationship Viewer search displays contribution histories for both the individual searched for and those individuals that appear as a search result, here " (as opposed to

1 , who appears as a separate individual or “data point” in the demonstration). See
2 Relationship Viewer Screenshot from Jan. 26, 2012 Demonstration (“Figure 2”).⁵

3 **Figure 2. Relationship Viewer Screenshot from Demonstration Jan. 26, 2012**



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5 Although the database used for the demonstration search contained a very limited number of
6 names — and consequently limited the number of individuals appearing as search results — the
7 demonstration confirmed that “the program at issue here allows a committee to view the
8 contribution histories of both the subject of the search and other individuals with whom the

⁵ The demonstrations also confirmed other aspects of the Aristotle 360 and Relationship Viewer programs, including the disclaimer warning individual users of the Act’s “sale and use” provision that appeared when the mouse-cursor was placed over the “Relationship View” button. See Photograph from Aristotle 360 Demonstration, no. 0777 (Nov. 17, 2011). A similar disclaimer is displayed at the bottom of an application called the “Fat Cat™ Compliance Lookup.” *Id.*, nos. 0759, 0760. The Fat Cat™ Compliance Lookup appears to be an updated version of the “Compliance-Vetting” feature in Aristotle’s CM5 program that was the subject of MUR 5625. See generally Third Gen Counsel’s Rpt., MUR 5625 (Aristotle Int’l, Inc.).

1 software determines that the original subject has a 'one degree of separation' relationship."

2 F&LA at 9-10.

3 Similarly, the description of the Relationship Viewer by Dean Phillips, President and co-
4 founder of Aristotle, is consistent with the description from the F&LA:

5 As in [Campaign Manager 5], the FEC data is displayed in the RV when a name query is
6 conducted. The displayed FEC data shows contributions made by the name that was
7 searched for as well as the contributions made by certain additional names (direct
8 connections or relations) from the client's database that appear as a result of the query.
9 A typical RV query essentially provides the same results as what was displayed in CM 5
10 and the images in the RV marketing video. This includes both a graphical, mapped
11 display of the search results and, in the left hand column, the names of individuals and
12 committees selected from the client's own database.

13
14 Phillips Decl. ¶ 7 (June 18, 2012).

15 Finally, the information provided by Aristotle also confirmed that the search results are
16 based on information already present in the client's database, such as personal and professional
17 relationships as well as physical addresses. Phillips Decl. ¶ 8 (June 18, 2012) ("These results
18 could include FEC contributor information, if individuals in the client's database associated with
19 nearby addresses have made contributions to federal committees, but the results are not limited
20 to contributor information that has been reported to the FEC.").

21 In sum, Aristotle's demonstration of the Relationship Viewer and Phillips' subsequent
22 description of the program confirmed that the program was designed and operated in the same
23 manner as described in the Commission's F&LA.

24 **B. Marketing, Sale, and Use of Relationship Viewer**

25 To assess the scope of any potential conciliation, we conducted a limited inquiry into
26 Aristotle's marketing, sales, and general use of the Relationship Viewer. The inquiries about
27 Aristotle's marketing focused primarily on establishing that it marketed the Relationship Viewer
28 in the manner alleged in the complaint. As identified in the F&LA, Aristotle marketed its

1 Aristotle 360 software and the component Relationship Viewer through: (1) a web-based
2 demonstration video; (2) a press release touting its patent application for data-mining
3 technology; and (3) an advertisement in *Politics Magazine*. See F&LA at 5-7. Because the web-
4 based demonstration video was the only marketing material no longer publicly available, we
5 inquired about the video's origin and purpose. As Phillips stated in his Declaration, "the
6 marketing video for the RV (Exhibit 1) displayed on Aristotle's Internet website was placed
7 there sometime in 2007 and the images in the video generally reflect the RV software (but not
8 the data points) included in the 360 software sold to our clients." Phillips Decl. ¶ 6 (June 18,
9 2012). Phillips also explained that the video was removed from Aristotle's website sometime
10 after the complaint in this matter was filed and that it was never replaced. Report of
11 Investigation of Dean A. Phillips at 3 (Jan. 27, 2012).

12 We also sought information regarding the sales of Aristotle 360, and its component
13 program Relationship Viewer. Aristotle provided a breakdown of its Aristotle 360 sales starting
14 "pre 2006" and running through September 2011. In total, Aristotle sold its 360 software
15 program to 387 different clients and made \$4,857,388 in gross sales. E-mail from Stephen
16 Hershkowitz, Counsel, Aristotle to William A. Powers, Attorney, FEC (Sept. 6, 2011) (attaching
17 summary of Aristotle 360 clients, reproduced below as "Figure 3").

Figure 3. Gross Sales of Aristotle 360

360 CLIENTS	No.	PRE 2006	2006	2007	2008	2009	2010	2011	TOTAL
FEDERAL	179	\$479	\$53,458	\$285,524	\$273,683	\$301,025	\$420,598	\$269,321	\$1,604,088
STATE	39	-	\$2,814	\$27,683	\$61,459	\$75,200	\$80,833	\$32,370	\$280,359
LOCAL	7	-	\$1,000	\$14,078	\$7,754	\$5,169	-	\$2,000	\$30,001
STATE PARTY	17	-	-	-	\$19,571	\$61,655	\$75,924	\$55,300	\$212,450
CORP/CORP PAC	85	-	\$77,281	\$137,652	\$125,503	\$251,147	\$407,229	\$351,306	\$1,350,118
ASSOC	60	-	\$31,111	\$101,615	\$104,083	\$240,669	\$568,476	\$334,897	\$1,380,851
TOTAL	387	\$479	\$165,664	\$566,553	\$592,053	\$934,865	\$1,553,060	\$1,045,193	\$4,857,388⁶

As part of the inquiry into Aristotle's sales, we asked for a sample contract for the Aristotle 360 program used by each of Aristotle's different types of client during each election cycle. Each sample contract contained a disclaimer regarding the Act's "sale and use" provision. See, e.g., E-mail from Stephen Hershkowitz, Counsel, Aristotle to William A. Powers, Attorney, FEC (Sept. 6, 2011) (attaching Contract between Aristotle Int'l, Inc. and Hunter for Congress ¶ 8(a)).

Finally, Aristotle provided information regarding its clients' use of the Relationship Viewer. An examination of logs kept for Aristotle's three servers from December 31, 2010, through October 11, 2011, revealed that Aristotle 360 users requested 47,358,065 pages, of which 177 were for the Relationship Viewer page, or 0.00037% of the reported page views during that period. E-mail from Stephen Hershkowitz, Counsel, Aristotle to William A. Powers, Attorney, FEC (Nov. 1, 2011). These 177 page requests during that period were made from 45 different IP addresses, further suggesting that certain users accessed the Relationship Viewer page multiple times during that period. *Id.*

⁶ Aristotle's summary "total" for gross sales does not appear to include the \$479 from pre-2006 sales. We nevertheless use Aristotle's \$4,857,388 "total" throughout the report as a conservative representation of Aristotle's gross sales. The apparent \$479 math error does not change our recommendations.

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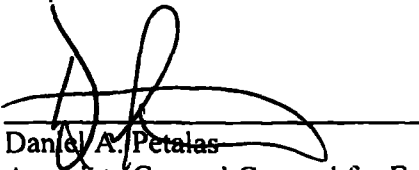
V. RECOMMENDATIONS


1. Enter in to pre-probable cause conciliation with Aristotle International, Inc.;
2. Approve the attached proposed conciliation agreement; and
3. Approve the appropriate letters.

Anthony Herman
General Counsel

11/29/12
Date

BY:


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Associate General Counsel for Enforcement


William A. Powers
Assistant General Counsel for Enforcement

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